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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/623,958	07/21/2003	Michael P. Mandina	MPM-560	6057
37282	7590	10/20/2004	EXAMINER	
HOWARD J. GREENWALD P.C. 349 W. COMMERCIAL STREET SUITE 2490 EAST ROCHESTER, NY 14445-2408			RACHUBA, MAURINA T	
			ART UNIT	PAPER NUMBER
			3723	
DATE MAILED: 10/20/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/623,958	<b>Applicant(s)</b> MANDINA, MICHAEL P.	
	<b>Examiner</b> M Rachuba	<b>Art Unit</b> 3723	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 September 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 2-4, 6-10, 12, 13 and 15-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 5, 11 and 14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 7/21/03 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of species 2 in the reply filed on 2 September 2004 is acknowledged. The traversal is on the ground(s) that claims 1 and 11 are generic, and that the examiner did not properly set forth the reasons for restriction as required in MPEP 808.02. This is not found persuasive because whether or not more than one of the listed claims are generic does not effect the examination of non-elected claims until a generic claim is found allowable. Further, applicant's reliance upon MPEP 808.02 is in error-the pertinent passage is MPEP 809.02, which deals with the election of species. In requiring an election of species, the examiner is required to list the species which are claimed, and indicate if any claims are generic. As this has been done, applicant's request for reconsideration has been considered, but no new restriction will be made. The examiner agrees that claim 11 is generic.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 2-4, 6-10, 12-13 and 15-20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 2 September 2004.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 5, 11 and 14 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Blum, 3,889,426. '426, figures 1 and 2, discloses the claimed invention, please refer to column 3, lines 10-22). Further, '426 discloses that the polishing pad cover at least two-thirds of the lens surface, and is shown in figure 1 as being almost twice larger than the lens surface. This can be interpreted as the polishing pad is comprised of a surface having a surface area which is less than 0.15 times as great as the surface area of the workpiece, the surface being any part of the pad which is less than 0.15 times as great as the surface area of the workpiece.

#### ***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Other similar devices are cited of interest.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to M Rachuba whose telephone number is 703-308-1361. As of 15 November 2004, the examiner's new telephone number will be (571) 272-4493. The examiner can normally be reached on Monday-Thursday from 8:30 AM to 3:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Hail, can be reached on (703) 308-2687. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status

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information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

M. Rachuba

Primary Patent Examiner

A handwritten signature in black ink, appearing to be 'M. Rachuba', written over the printed name and title.